IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 119 OF 2007
IN
CRIMINAL WRIT PETITION NO.1015 OF 2001

Salim Sayed Salman and others ..Applicants
V/s
Union of India and others ..Respondents.

Mr. P.M. Vyas with Hitesh P. Vyas for the applicants
Mr.D.N. Salvi for the respondent Nos. 1 to 4
Smt. U.V. Kejriwal, APP for respondentNo.7.

CORAM : SRI R.M.S. KHANDEPARKAR AND
SRI A.A. SAYED, JJ.

DATE : 14TH DECEMBER, 2007

ORAL ORDER (PER R.M.S. KHANDEPARKAR, J)

1. On oral motion made by the learned Advocate for the applicants, the respondent No.6 is permitted to be deleted from the cause title.

2. Heard. This application is for condonation of delay in filing the application for restoration of a Writ Petition No.1015/2004 which was dismissed by order dated 29th January, 2001 for non prosecution. The present application was filed on 15th March, 2007.

3. It is the case of the applicants that Writ

Petition No. 1015/2001 was admitted by this Court by order dated 8th August, 2001 and the applicants were represented by Shri Jagdish C. Vora Advocate on record. The applicants were all the while under the impression that a Writ Petition was pending for final hearing as from time to time they enquired about the progress of the matter from their Advocate and they were accordingly told by their Advocate. However on 8th March, 2007 when the applicant No.2 enquired with the office of the High Court about their Writ Petition, he came to know that the petition was dismissed for non prosecution as long as back on 29th January, 2004. It is further case that the dismissal of the writ petition for non prosecution was on the ground that the few pages of the petition were not readable and respondent No.5 was not served. Thereafter, the applicants contacted their Advocate Shri J.C. Vora and they told about the dismissal of the writ petition, whereupon Advocate Vora told them that he was not regularly practicing Advocate and secondly he was suffering from myocardial infection (heart ailment) and therefore, he was not attending the matter during the relevant period. In these circumstances, it is the contention on behalf of the

applicants that the petition deserves to be restored by condoning the delay.

4. The application on the face of it states that there is delay of 3 years, one month and 15 days in filing the application in question. Apparently, the delay is sought to be calculated from 29.1.2004, the day on which the petition was dismissed for non prosecution. The application however, nowhere discloses any explanation as to why the applicants did not inquire from Advocate Shri Vora as to on what basis the applicants were informed by him that the petition was pending for final hearing. The details in that regard were absolutely necessary in the facts of the case wherein it is disclosed that the dismissal of the writ petition was on the ground of failure on the part of the petitioners to take necessary steps to remove the objections in relation to the pages which were not readable as also about service of writ upon the respondent No.5. Order dated 29.1.2004 clearly discloses that the petitioners had not taken care to furnish readable pages as also had not bothered to take necessary steps to serve the respondent No.5. In those

circumstances, it was necessary for the applicants to take appropriate steps to remove the office objections in order to establish their bonafide and genuine interest to pursue the matter. From the fact that the applicants did not bother to take the necessary steps to replace the non readable pages and to get the respondent No.5 served, for a period of three years from the date of admission, the objection, apparently disclosed lack of interest in pursuing with the matter. In these circumstances, the above details were absolutely necessary while considering as to whether the applicants have made out a sufficient cause for condonation of delay of 3 years, 1 month and 15 days which is the actual delay caused in filing application. We are fully aware that the applicants seeking condonation of delay need not furnish explanation for each and every day of delay. However, the explanation has to reveal sufficient cause for condonation of delay. Mere impression of the applicants that the petition was pending for final hearing for all those 4 years could not be said to be a sufficient cause, nor the contention on the part of the Advocate that he was not a regular practicing Advocate could be a

sufficient ground for condoning delay. In the absence of any explanation as regards the delay from 29.1.2004 till 8th March, 2007, apart from contending that the applicants were under the impression on the basis of information given by the Advocate that the matter was pending for final hearing, there is absolutely no explanation as such on record to condone the delay. In fact the statement in para 4A to the effect that the applicants were under impression that the matter was pending for final hearing on the basis of information given by their Advocate is contrary to what has been stated in para 1D wherein they themselves have stated that their Advocate had told them that he was not regularly practising Advocate. Therefore, there was no occasion for him to inform the applicants that the petition was pending for final hearing and the applicants were under the impression that the petition was pending for final hearing on the basis of alleged information by the Advocate. Therefore, we do not find any sufficient cause for condonation of delay having been made out.

5. Besides, the Writ Petition No.1015/2001 was

undisputedly filed for quashing the complaint and the investigation against the applicants. It has not been disputed that the complaint discloses a cognizable offence. In the circumstances, the question of quashing of the complaint which discloses a cognizable offence does not arise at all. Even on merits also there is no case for consideration. In the circumstances, therefore, no case made out for condonation of delay. Application is rejected.

(R.M.S.KHANDEPARKAR,J)

(A.A. SAYED, J.)